U.S. Department of Justice

United States Attorney
Eastern District of New York

EAG:MKM/JPL
F. #2010R02042

271 Cadman Plaza East
Brooklyn, New York 11201

April 14, 2015

By Hand and ECF

The Honorable Roanne L. Mann
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Vincent Vertuccio, et al.
Criminal Docket No. 15-174 (SLT)

Dear Judge Mann:

The government respectfully submits this letter to request a permanent order of detention with respect to the defendant Vincent Vertuccio. As further described below, because of defendant Vertuccio's ties to the Bonanno organized crime family of La Cosa Nostra (the "Bonanno crime family"), he poses a danger to the community. In addition, the charged conspiracy by defendant's Vertuccio and Servider to obstruct justice by interfering with a grand jury investigation demonstrates that there is a serious risk that these defendants will attempt to obstruct justice, another basis for pretrial detention. The government therefore also seeks a substantial bail package with regard to defendant John Servider to mitigate the risk of obstruction of justice and flight from prosecution.

I. The Indictment

On April 8, 2015, a federal grand jury in Brooklyn, New York returned a sealed ten-count indictment against Vincent Vertuccio, also known as "Vinny," his lawyer John Servider, and his accountant Praful Pandya. Vertuccio, who has maintained a long-term affiliation with the Bonanno crime family, was charged with conspiracy to defraud the Port Authority of New York and New Jersey in connection with the One World Trade Center project located in lower Manhattan, and related money laundering and tax crimes. Specifically, Vertuccio directed an employee of Crimson Construction Corporation ("Crimson"), which was bidding for work on the World Trade Center project, not to disclose Vertuccio's role in Crimson because of Vertuccio's ties to organized crime. After Crimson was awarded a contract worth approximately $11.4 million (the "Contract"), Crimson submitted an invoice and received payment of $684,000 for "mobilization." Instead of using the money for its intended purpose, however, Vertuccio directed, among other things, that Crimson deposit checks totaling approximately $170,000 into a bank account held in the name of Vertuccio's mother, and pay for construction work on Vertuccio's daughter's residence, in Queens, New York. Thereafter, Crimson requested and received payments totaling more than $900,000 under the Contract, approximately $700,000 of which was deposited into a Crimson bank account controlled by defendant Servider and then transferred to Servider's master escrow account (the "Master Escrow Account"). From the Master Escrow Account, approximately $700,000 was transferred into one or more bank accounts tied to Vertuccio, including approximately $215,000 into an account held in the name of Vertuccio's mother, and used to pay for construction work on Vertuccio's daughter's residence. As a result of Vertuccio's actions, among other reasons, Crimson was thereafter unable to pay its vendors and sub-contractors, and therefore was unable to perform under the Contract.

After Vertuccio became aware of an ongoing grand jury investigation into his conduct, he along with his lawyer John Servider, conspired to alter invoices and sales receipts issued by a Manhattan jewelry store so as to remove Vertuccio's name from the records before they were returned to the grand jury.

II. Legal Standard – The Bail Reform Act

Under the Bail Reform Act, 18 U.S.C. §§ 3141 et seq., federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. 18 U.S.C. § 3142(e) ("no condition or combination of conditions would reasonably assure the appearance of the person as required and the safety of any other person and the community"). A finding of dangerousness must be supported by clear and convincing evidence. United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995); United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985). A finding of risk of flight must be supported by a preponderance of the evidence. United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); Chimurenga, 760 F.2d at 405. In addition, a court may also order detention if there is "a serious risk that the [defendant] will ... attempt to obstruct justice, or ... to threaten, injure, or intimidate, a prospective witness or juror." 18 U.S.C. § 3142(f)(2)(B); see United States v. Friedman, 837 F.2d 48 (2d Cir. 1988).

The Bail Reform Act lists the following four factors as relevant to the determination of whether detention is appropriate: (1) the nature and circumstances of the crimes charged, (2) the history and characteristics of the defendant, (3) the seriousness of the danger posed by the defendant's release, and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g). Evidentiary rules do not apply at detention hearings and the government is entitled to present evidence by way of proffer, among other means. See 18 U.S.C. § 3142(f)(2); see also United States v. Abuhamra, 389 F.3d 309, 320 n.7 (2d Cir.

2004) (bail hearings are typically informal affairs, not substitutes for trial or discovery); United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (government entitled to proceed by proffer in detention hearings); Ferranti, 66 F.3d at 542 (same); United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986) (same).

In considering applications for bail, courts have observed that organized crime defendants pose a particular threat to the community due to the continuing nature of criminal organizations. Because organized crime defendants are often career criminals who belong to an illegal enterprise, they pose a distinct threat to commit additional crimes if released on bail. See United States v. Salerno, 631 F. Supp. 1375 (S.D.N.Y. 1986) (finding that the illegal businesses of organized crime require constant attention and protection, and recognizing a strong incentive on the part of its leadership to continue business as usual).

Congress noted that defendants pose a danger to the community not only when they commit acts of violence, but also when it is likely that they will commit even non-violent crimes that are detrimental to the community. See S. Rep. No. 225 98th Cong., 1st Sess. at 6-7, as reprinted in 1984 U.S. Code Cong. & Admin. News 3182 ("Senate Report"), 3195 ("[L]anguage referring to safety of the community refers to the danger that the defendant might engage in criminal activity to the detriment of the community . . . . The Committee intends that the concern about safety be given a broader construction than merely danger of harm involving physical violence."). In Salerno, the court approvingly quoted the Second Circuit's decision in United States v. Colombo, 777 F.2d 96 (2d Cir. 1985), which had held:

> In light of Congress' direction that "[w]here there is a strong probability that a person will commit additional crimes if released, the need to protect the community becomes sufficiently compelling that detention is, on balance, appropriate," . . . we hold that the decision to release Colombo based upon conditions which we consider to be wholly inadequate was clearly erroneous.

631 F. Supp. at 1371 (quoting Colombo, 777 F.2d at 99 (quoting Senate Report at 3189) (citation omitted)).

The Second Circuit has repeatedly stated that even elaborate conditions of home detention cannot substitute for incarceration where the defendant cannot be trusted to comply with the conditions of release. See United States v. Millan, 4 F.3d 1038, 1048-49 (2d Cir. 1993) (home detention and electronic surveillance can be circumvented); United States v. Orena, 986 F.2d 628, 632 (2d Cir. 1993) ("home detention and electronic monitoring at best 'elaborately replicate a detention facility without the confidence of security such a facility instills'") (quoting United States v. Gotti, 776 F. Supp. 666, 672 (E.D.N.Y. 1991)).

III. Defendant Vertuccio Poses a Danger to the Community

Based on information provided by a cooperating witness (the "CW"), Vertuccio has maintained a longstanding affiliation with the Bonanno crime family.[1] Among other things, Vertuccio introduced the CW to former acting Bonanno boss Salvatore "Sal the Ironworker" Montagna before Montagna was extradited to Canada where he was later murdered, and also to Anthony "Fat Anthony" Rabito, a longtime leader and one-time consigliere of the Bonanno crime family, who was convicted of racketeering involving bookmaking and extortion and sentenced to 33 months' imprisonment in 2008. See United States v. Rabito, 06-CR-800 (SLT). Vertuccio was observed by the CW riding in a car with Rabito as recently as March 24, 2015.

In addition, during a consensually recorded conversation, Vertuccio discussed with the CW an individual who Vertuccio suspected might cooperate with the government. Vertuccio warned the CW "don't even talk to him" and, in discussing the individual, Vertuccio gestured with his finger as though pointing a gun to his head – signifying the long-held view within organized crime that the punishment for cooperating with the government is death.

The CW's information about Vertuccio's ties to the Bonanno crime family is corroborated by a consensual recording made by then Bonanno crime family boss Joseph Massino of then Bonanno street boss Vincent Basciano on January 3, 2005, during which the following exchange occurred:

MASSINO: What's the story with the kid Sal?

BASCIANO: . . . Sal the iron-worker? He's alright, but he's a little fuckin' ah ah – he, he's alright.

MASSINO: He's got that kid Vinny Vertuccio.

BASCIANO: I put Vinny Vertuccio. I told Michael[2] to take Vinny Vertuccio. I told Michael to take Vinny Vertuccio.

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[1] The cooperating witness pleaded guilty to a multi-count information pursuant to a cooperation agreement. He provided information about the defendants as part of his cooperation with the government, for which he hopes to receive leniency at sentencing.

[2] "Michael" is a reference to Michael "Mikey Nose" Mancuso, the current boss of the Bonanno crime family, who is serving a fifteen-year sentence for conspiracy to murder in aid of racketeering and illegal gambling. See United States v. Mancuso, 05-CR-60 (NGG).

MASSINO: You know, that's another thing nobody said a word to me.

BASCIANO: About what?

MASSINO: About Vinny Vertuccio. He's with me. Nobody asked me anything.

BASCIANO: I but I – listen, I don't know this.

MASSINO: Where do, who do you think he was around?

BASCIANO: Well, I sent word to you with Vinny Vertuccio.

MASSINO: I never got it. I got no problem. Let me tell you what happened. Eh, if I remember –

BASCIANO: If I'm, [unintelligible] you told before. I told Michael get two thousand or six thousand.

MASSINO: . . . When, when I was in here you was in the street. He report to Louie Restivo.[3]

BASCIANO: Correct.

MASSINO: Yous guys sent me word Canada wanna put Vinny –

BASCIANO: Correct.

MASSINO: Vertuccio, with Sal the ironworker.

BASCIANO: Correct.

MASSINO: And I said no.

BASCIANO: Correct.

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[3] Longtime Bonanno soldier Louis Restivo, who died recently, was sentenced to a ten-year term of imprisonment for his 2005 conviction for conspiracy to murder in aid of racketeering. See United States v. Restivo, 03-CR-1382 (NGG).

In light of Vertuccio's affiliation with the Bonanno crime family and his ties to its leadership, as well as the seriousness of the pending charges, there is a significant danger that he will commit additional crimes if released on bail.

IV. There is a Serious Risk that Vertuccio and Servider Will Obstruct Justice

As set forth above, after they became aware of an ongoing grand jury investigation, defendants Vertuccio and Servider conspired to alter invoices and sales receipts issued by a Manhattan jewelry store so as to remove Vertuccio's name from the records before they were returned to the grand jury. This demonstrated willingness to obstruct justice by interfering with a grand jury investigation evinces an utter lack of respect for the federal justice system – especially by Servider, who is an attorney who has practiced in this court – and makes clear the serious risk that Vertuccio and Servider will continue their efforts to evade justice by attempting to destroy evidence or tamper with witnesses. For this reason, and because conditions such as home detention with electronic monitoring can be easily circumvented and are ineffective in preventing obstructive conduct, Vertuccio should be detained and a substantial bail package is warranted for Servider.

V. Conclusion

For all of the foregoing reasons, the government respectfully submits that pretrial detention should be ordered as to defendant Vertuccio and the Court should require a substantial bail package as to Servider.

Respectfully submitted,

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cc: Defense Counsel (by hand and ECF)
Clerk of Court (by ECF)